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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,677	01/29/2002	Philippe R. Murcia	RFI-3.2.002/3472	4104

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EXAMINER
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WACHTEL, ALEXIS A

ART UNIT	PAPER NUMBER
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1764

DATE MAILED: 09/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/058,677

Applicant(s)

MURCIA, PHILIPPE R.

Examiner

Alexis Wachtel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 1-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2-27-2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-12, drawn to a method of making an apparatus, classified in class 202, subclass 82.
  - II. Claims 13-16, drawn to a method of using an apparatus, classified in class 202, subclass 82.
  - III. Claims 17-24, drawn to an apparatus, classified in class 126, subclass 1R.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and III are related as process of making and apparatus made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the identical apparatus can be made by assembling the apparatus in a manufacturing warehouse, rather than transporting the apparatus to a site of wood waste and assembling it there.

Inventions III and II are related as apparatus and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the apparatus as claimed can be practiced with another materially different apparatus or (2) the apparatus as claimed can be used in a materially different process of using that apparatus (MPEP § 806.05(h)). In the instant case the process can be practiced with a kiln that includes a single air channel beneath the base.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Robert Hess on 2-20-05 a provisional election was made with traverse to prosecute the invention of group III, claims 17-24. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-16 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 17,18,19 and 20,22 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,094,295 to Boswell et al and US 4,512,249 to Mentzel.

With respect to claim 17, a portable apparatus for making charcoal comprising: a base (12,14) having an open top and bottom, the base also having a shelf that extends about a periphery of an interior of the base (56); a cover (94) closing the open top and resting on the shelf, the cover having a bottom that defines an outside area dimension, the base having a bottom that encloses an inside area dimension that is larger than the outside area dimension defined by a bottom of the cover, the shelf defining an inside area dimension that is smaller than the outside area dimension defined by the bottom of

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the cover, the cover having a distance in a direction of elevation that is smaller than a distance of elevation of the base (See Fig.2).

Boswell et al as set forth above fails to teach a plurality of air channels spaced apart from each beneath the base. However, since Boswell conceptually established the use of an air channel (24) under the base, having employed multiple air channels would have been obvious to one of ordinary skill in the art motivated by the desire to increase airflow into the apparatus.

Boswell et al as set forth above fails to teach that the cover has at least one port. Mentzel teaches a smoker apparatus having a cover (12) with a vent (16). The vent can be used to control the temperature in the smoker (Col 3, lines 20-25). In view of this teaching it would have been obvious to one of ordinary skill to have used included a vent within the cover disclosed by Boswell et al motivated by the desire to provide temperature attenuating means.

With respect to claim 18, wherein the base includes a bottom section (Boswell et al, 12) and an upper section (Boswell et al, 14), the upper section having the shelf, the bottom section having a further shelf (Boswell et al, 22) on which is supported the upper section.

With respect to claim 19, wherein the base is cylindrical in shape (Boswell et al, See Fig.2).

With respect to claim 20, Boswell et al and Mentzel as set forth above fails to teach that the cover is conical. However, employing a cover with a conical construction

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would have been a simple matter of design choice absent a showing of unexpected results.

With respect to claim 22, A portable apparatus for making charcoal comprising: a base (12,14) having an open top and bottom, the base also having a shelf (Boswell et al, 56) that extends about a periphery of an interior of the base; a cover (Boswell et al, 94) configured to close the open top when resting on the shelf, the cover having a bottom that defines an outside area dimension, the base having a bottom that encloses an inside area dimension that is larger than the outside area dimension defined by a bottom of the cover, the shelf defining an inside area dimension that is smaller than the outside area dimension defined by the bottom of the cover, the cover having a distance in a direction of elevation that is smaller than a distance of elevation of the base (See Fig.2).

Boswell et al as set forth above fails to teach that the cover has at least one port. Mentzel teaches a smoker apparatus having a cover (12) with a vent (16). The vent can be used to control the temperature in the smoker (Col 3, lines 20-25). In view of this teaching it would have been obvious to one of ordinary skill to have used included a vent within the cover disclosed by Boswell et al motivated by the desire to provide temperature attenuating means.

4. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,094,295 to Boswell et al and US 4512249 to Mentzel and US 2,956,933 to Jolin.

With respect to claim 21, Boswell et al and Mentzel as set forth above fails to teach that the air channels have collars, further comprising a plurality of smokestacks

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fitted on every other one of the collars. Jolin teaches a charcoal kiln having air channels with collars (28). Smokestacks (26) are fitted on the collars. Since Jolin conceptually teaches the use of smokestacks fitted on air channel collars for the purpose of providing air to the interior of the charcoal kiln, having integrated such air channel collars with the plural air channels and smokestacks as set forth above by Boswell would have been obvious to one of ordinary skill. One of ordinary skill would have been motivated by the desire to improved air flow to the apparatus disclosed by Boswell.

Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,094,295 to Boswell et al and US 4,512,249 to Mentzel and US 5,165,385 to Doolittle.

With respect to claim 23, Boswell et al and Mentzel as set forth above fails to teach a vehicle on which is arranged the base with the cover arranged within the confines of the base. Doolittle teaches a grill on wheels (Fig.1). Since the wheels afford portability to the grill, it would have been obvious to have rendered the apparatus disclosed by Boswell et al and Mentzel portable by providing said apparatus with a wheeled assembly.

With respect to claim 24, wherein the base has an upper section (Boswell, 14) and a bottom section (Boswell, 12), the upper section having the shelf, the bottom section having a further shelf on which a bottom of the upper section is configured to be supported when stacked on top, the upper section being within confines of the bottom section on the vehicle and the cover being within the confines of the upper section on

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the vehicle, the bottom section having a dimension in an elevation direction that is larger than a dimension of in the elevation direction of the upper section (Boswell, Fig.2).

***Prior Art of Record***

5. The prior art of record and not relied upon is considered pertinent to Applicant's disclosure. In addition, the following references are cited for disclosing various aspects of Applicant's invention: GB 2 257 980; US 2159310; US 5551958; US 4951582; US 4583992; US 6827912; US 4530702; US 4230602; US 3901766; US 2956933

***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alex Wachtel whose telephone number is 571-272-1455. The examiner can normally be reached on 10:30am to 6:30pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Glenn Caldarola, can be reached at (571)-272-1444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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